

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:04CV11

**GERALD D. PAYNE; DENNY
CHARLES PEARCE; and MAURICE
ANTHONY LASHER,**

Plaintiffs,

Vs.

**STEVEN A. WARD; SAMUEL G.
FERRELL; RAY CHASTEN; HERMAN
W. McEWAN; LIONEL KOON;
TANTAMOUNT, L.L.C.; PARKLAND
TRUST B.T.; JAMES R. KELLER; and
ADVENTUROUS LIVING, INC.,**

Defendants.

ORDER

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed May 20, 2005.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On May 20, 2005, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Plaintiffs' motions to enter default as to the Defendants Lionel Koon and Herman W. McEwan. Those parties proceeding *pro se* and counsel for the remaining parties

were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on June 6, 2005. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Plaintiffs' motions be denied and that the Defendant Lionel Koon's Response to Order to Show Cause be construed as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and the same be denied.

IT IS, THEREFORE, ORDERED that Plaintiffs' motions to enter default as to Defendants Lionel Koon and Herman W. McEwan are hereby **DENIED**.

IT IS FURTHER ORDERED that the Defendant Lionel Koon's Response to Order to Show Cause is hereby construed as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and the same is **DENIED**.

Signed: June 10, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

